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Supreme Court of the United States

OCTOBER TERM, 1940.

No. 183.

HENRY W. TAFT and JULIA W. S. TAFT,
Petitioners,

AGAINST

GUY T. HELVERING, Commissioner of Internal Revenue,
Respondent.

BRIEF FOR PETITIONERS.

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BRIEF FOR PETITIONERS.

Opinions Below.

The opinion of the Board of Tax Appeals is reported in 40 B. T. A. 229 and is produced in full in the record at pages 10-15. The decision of the United States Circuit Court of Appeals, Second Circuit, is reported in 111 Fed. (2d) 145 and on page 47 of the record.

Jurisdiction.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C. A., Section 347). Certiorari was granted by this Court on October 14, 1940.

Statement of the Case.

Petitioners are husband and wife living together and they reside in the City of New York. They filed joint

income tax returns for the calendar years 1934 and 1935. The return for the year 1934 showed an aggregate net income of $83,682.99. In arriving at this net income, a deduction of $2,852 was taken on the return for gifts to charity. Of this latter sum, $1,477 represented contributions paid by the wife out of her individual bank account. Her total gross income for the year was $12.10. The return for the year 1935 showed an aggregate net income of $92,374.59. In arriving at this net income, a deduction of $2,715.80 was taken on the return for gifts to charity. Of this sum, $1,545.80 represented gifts paid by the wife out of her individual bank account. The wife's total gross income for the year 1935 was $15.30 (Rec. p. 11). All funds in her bank accounts were funds furnished by the husband except the sums of $12.10 and $15.30 mentioned above (Rec. p. 22). Upon audit of the return, the Commissioner ruled that the aforesaid deductions for charity made by the wife must be reduced to 15% of her net income. Thus, he allowed a deduction of $1.81 only for the year 1934 and $2.30 only for the year 1935 on account of the wife's charitable gifts (Rec. p. 12). The net result of this was a disallowance of $2,918.69 of the deduction taken for charities on the two returns and the resulting deficiency against the petitioners of $722.79 for the year 1934 and $827.17 for the year 1935 (Rec. pp. 6, 7, 8, 9). The petitioners appealed to the United States Board of Tax Appeals and to the United States Circuit Court of Appeals, Second Circuit, and the case comes before this Court on writ of certiorari granted on October 14, 1940.

Specification of Errors to Be Urged.

The order granting the writ limits the petitioners to the second question presented by the petition for the writ which was stated as follows:

> "Whether the limitation on the deduction for contributions to charities to 15% of the taxpayer's

net income must be computed with reference to the husband's and wife's separate net income where a joint return is filed, or whether it may be computed on their combined net income."

Statute Involved.

Revenue Act of 1934 (48 Stat. 680):

"SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

* * * * * *

(o) Charitable and Other Contributions.—In the case of an individual, contributions or gifts made within the taxable year to or for the use of:

(1) the United States, any State, Territory, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) a corporation, or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation;

* * * * * *

to an amount which in all the above cases combined does not exceed 15 per centum of the taxpayer's net income as computed without the benefit of this subsection. Such contributions or gifts shall be allow-

able as deductions only if verified under rules and regulations prescribed by the Commissioner, with the approval of the Secretary."

"SEC. 51. INDIVIDUAL RETURNS.

* * * * * * *

(b) Husband and Wife.—If a husband and wife living together have an aggregate net income for the taxable year of $2,500 or over, or an aggregate gross income for such year of $5,000 or over——

(1) Each shall make such a return, or

(2) The income of each shall be included in a single joint return, in which case the tax shall be computed on the aggregate income."

ARGUMENT.

The provisions of the various income tax statutes providing that husband and wife might file a joint return were intended by Congress to grant to husband and wife the privilege of pooling their income and deductions thus arriving at the combined aggregate net income.

The Revenue Act of 1918 was the first Income Tax Act to provide for the filing of joint income tax returns of husband and wife. Section 223 thereof (40 Stat. 1074) provided:

"That every individual having a net income for the taxable year of $1,000 or over if single * * *, or of $2,000 or over if married and living with husband or wife, shall make under oath a return stating specifically the items of his gross income and the deductions and credits allowed by this title. If a

husband and wife living together have an aggregate net income of $2,000 or over, each shall make such a return unless the income of each is included in a single joint return."

The statute did not provide that the tax on such a return should be computed on the aggregate net income. In Sol. Op. 90 (4 C. B., p. 236), published early in 1921, the Solicitor of Internal Revenue ruled that under that Act, the tax on a husband and wife filing a joint return was to be computed on the aggregate net income shown on the return. The same opinion held that the deductions of one spouse, if they exceeded his or her income, could be deducted from the gross income of the other. When the Revenue Act of 1921 was enacted, Section 223 thereof changed the last sentence quoted above to the following form:

"If a husband and wife living together have an aggregate net income for the taxable year of $2,000 or over, * * *

(1) Each shall make such a return, or

(2) The income of each shall be included in a single joint return, in which case the tax shall be computed on the aggregate income."

The Report of the Ways and Means Committee of the House on the bill (67th Cong. 1st Sess., Report No. 350) stated:

"Section 231 of the bill proposes to amend Section 223 of the present law in such a manner as to clear up the doubt now existing as to the right of husband and wife in all cases to make a joint return and have the tax computed on the combined income."

The Report of the Finance Committee of the Senate (Senate Report No. 275, 67th Cong. 1st Sess.) commenting on the change, stated:

> "It also is made clear that husband and wife may make a joint return even though one or both have incomes large enough to be subject to surtaxes."

It seems obvious that this change was merely an incorporation in the statute of the principles announced in the Solicitor's ruling and that it was intended to confer a privilege. Certainly Congress must have realized that only the most confirmed patriot would file a joint return which subjected the combined income to a higher surtax than would be payable in case separate returns were filed. Congress must, therefore, have intended to confer some benefit. The statements of the House and Senate Committees quoted above seem to bear out this inference.

It is significant to note here that the provision of the statute reads:

> "If a husband and wife living together have an *aggregate net income* for the taxable year of $2,000 or over * * *
>
> (2) The income of each shall be included in a single *joint* return, in which case the tax shall be computed on the aggregate income." (Italics supplied.)

The statute does not use the words *"aggregate net incomes"* or *"aggregate incomes"*. Moreover, the word "joint" must be given some weight for if, as the Government contends, this statute means only that two separate returns may be put on one piece of paper, then the word "joint" means nothing. The words used in the statute

clearly suggest the idea of a single net income and if Congress meant anything else, it certainly chose very inappropriate words to express its purpose.

On February 22, 1922, the Treasury Department issued Regulations No. 62 under the Revenue Act of 1921 (42 Stat. 227), which Regulations contained the following language in Article 401 thereof:

> "Where the income of each is included in a single joint return, the tax is computed on the aggregate income and all deductions and credits to which either is entitled shall be taken from such aggregate income."

There is nothing to indicate that this regulation was intended as a modification of Sol. Op. 90, *supra*. So far as we have been able to discover, Sol. Op. 90 has never been specifically revoked. Indeed, after the promulgation of the above Article 401, the Commissioner published other rulings wholly consistent with Sol. Op. 90 which would indicate that he did not regard the regulation as overruling the principles laid down in Sol. Op. 90 (See I. T. 1997 III-1 C. B. 149, 1924). In 1933, the Commissioner was asked whether capital losses of a husband could be offset against similar gains of the wife on a joint return. He replied that:

> "• • • the loss sustained by the husband would offset the same amount of gain realized by the wife from such source." (CCH Fed. Tax Service 1933 III Par. 6037.)

As late as 1935, Government counsel conceded that a business loss of a husband for the year 1930 could be deducted from similar income of the wife on a joint return for the same year under the corresponding provisions of the Revenue Act of 1928 and the regulation above quoted

(*Van Vleck* v. *Commissioner*, 80 Fed. [2d] 217, 218, certiorari denied 298 U. S. 656). The Court refused to allow a statutory net loss of the husband for a prior year to be set off against the wife's income for the year 1930. The latter decision was based on another specific provision of the Act dealing with statutory net losses.

The Commissioner is certainly presumed to know the language of his own regulations and it seems inconceivable that he would have issued, published and allowed the rulings referred to above to remain outstanding if he had regarded them as contrary to Article 401 of Regulations 62 quoted above, or that his counsel would have conceded the point in the *Van Vleck* case, *supra*, had he regarded it as contrary to the Regulation.

The language of the above quoted statute of 1921 has been carried in identical form in all of the later income tax acts except that the amount of the personal credit has varied (Section 223, Revenue Acts of 1924 and 1926 and Section 51, Revenue Acts of 1928, 1932, 1934 and 1936). The provisions of the Revenue Act of 1934 which govern this case are set forth in full at pages 3 and 4 of this brief. The identical language of the Regulation quoted above has been found in the Regulations under each of these acts since 1921 (Art. 401, Regs. 65 and 69; Art. 381, Reg. 74; Art. 281, Reg. 77; and Art. 51-[1], Regs. 86 and 94).

The Court of Appeals for the Fifth Circuit in *Commissioner* v. *Thomas*, 84 Fed. (2d) 562 (1936), commenting on Section 51 of the Revenue Act of 1932, stated:

> "Section 51, *supra*, is clearly intended by Congress to be in favor of the taxpayer. Therefore, it should be liberally construed to effectuate that intention. As applied to this case, the plain, common sense meaning of the provision 'the tax shall be computed on the aggregate income' is that the income of the spouses is to be added together and losses sustained by either or both of them are to

be deducted from that aggregate in determining the net taxable income."

In *Pierce* v. *Commissioner,* 100 Fed. (2d) 397 (1938) Circuit Judge Learned Hand in a dissenting opinion made the following statement about Section 51 of the Revenue Act of 1932:

> "When §51(b) (2) requires the tax to be computed on the net aggregate income, it means the balance found by adding together all those items of gross income, which both spouses would be obliged to enter on both their separate returns, and subtracting all those deductions, which the statute allowed to both upon such returns."

In *Commissioner* v. *Rabenold,* 108 Fed. (2d) 639, C. C. A. 2nd (1940), Judge Patterson in a dissenting opinion said:

> "The respondents, husband and wife, saw fit to file a single joint income tax return for 1933. The Revenue Act of 1932, like prior acts, gave them the right to file 'a single joint return' and declared that in such case 'the tax shall be computed on the aggregate income.' The obvious result, it seems to me, is that husband and wife who file a single return are to be treated as a single taxpayer and are jointly liable for the tax, * * * Since 1918 the form of return used by husband and wife jointly has been the same form as that used by a single person, and it has no spaces for separation of items between husband and wife."

These statements, it seems to us, interpret the statute in the manner intended by Congress and in conformity with the consistent construction placed on the statute and the

regulation by the Commissioner from 1921 until at least 1934.

The text books generally accepted the same view. See Klein, Federal Income Taxation (1929) Par. 37:5(b), where the writer states:

> "Where the spouses elect to file a joint return, they are regarded as a single taxpayer, and the tax is computed on the aggregate or combined income. All deductions and credits to which either the husband or wife is entitled are to be deducted from the combined income.* Where in the case of a joint return either husband or wife has allowable deductions for the taxable year in excess of his or her separate gross income for that year, such excess may be deducted from the net income of the other spouse for the purpose of computing both the normal tax and surtax."**

Holmes, Federal Taxes, Sixth Edition (1925) contains the following statement at page 1289:

> "If a husband or wife has allowable deductions for any taxable year in excess of his or her gross income for such year, such excess may, if the husband and wife are living together and a single return is filed, be deducted from the net income of the other spouse for the purpose of computing both the normal and the surtax." (Citing the same rulings and regulations referred to by Klein, *supra.*)

There was never any provision in any of the regulations prior to 1934 which attempted to limit the charitable deduction on a joint return to 15% of the net income of each spouse. When Regulations 86, issued under the

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*I. T. 1997, C. B. III-1, 149; Reg. 74, Art. 381; Art. 401, Regs. 69, 65 and 62.

**Sol. Op. 90, C. B. 4, 236.

Revenue Act of 1934, were promulgated in February, 1935, there appeared for the first time the following language in Article 23(o)-(1):

> "Whether a husband and wife make a joint return or separate returns, the 15% limitation on deduction for contributions or gifts is based on the separate net income (computed without regard to such contributions or gifts) of the spouse making the contributions or gifts."

There was no change in the language of Section 51 of the Revenue Act of 1934 or in Section 23(o) of the same Act which warranted this addition to the regulation. It was apparently based on the decision of the Board of Tax Appeals in *Gummey* v. *Commissioner*, 26 B. T. A. 894, published in 1932, which held that in computing the tax due on a single joint return of husband and wife, each should be treated as an individual taxpayer in applying the provisions of Section 118 of the Revenue Act of 1928, which Section dealt with disallowance of losses of a person purchasing identical securities within 30 days after sale. Whether that decision is right or wrong, it does not seem to us to be a necessary or logical conclusion to be drawn from it that Section 51 of the Revenue Act of 1934 confers no privilege with respect to a joint return and that such return must be dealt with exactly as if it were a separate return of each spouse.

Counsel for the Government in the argument below lays great stress upon the provisions of Article 51-1 of Regulations 86 which provides that:

> "If the income of each is included in a single joint return, the tax is computed on the aggregate income and all deductions and credits to which either is entitled shall be taken from such aggregate income."

He particularly emphasizes the language "all deductions * * * to which either is entitled * * *". To quote this obviously ambiguous regulation in support of his interpretation of the meaning of the statute without giving consideration to the interpretation of it which the Commissioner had lulled the public into accepting for nearly 14 years simply begs the question.

But, argues the Government, I. T. 1997, *supra* (1924), upon which we put reliance, was revoked by I. T. 2428 XIII-2 C. B. 293 (1934). This proves the very point which we have been making, namely, that without change in the statute to warrant it, the Commissioner sought in 1934 to adopt an interpretation of his regulation and the statute inconsistent with the interpretation which he had placed on the same regulation from 1921 to 1934.

> "Treasury Regulations and interpretations long continued without substantial change, applying to unamended or substantially re-enacted statutes, are deemed to have received Congressional approval and to have the effect of law." (*Helvering* v. *Winmill*, 305 U. S. 79; Citing *U. S.* v. *Dakota Montana Oil Company*, 288 U. S. 459, 466; *Helvering* v. *R. J. Reynolds Tobacco Company*, 306 U. S. 110.)

We are not here dealing with a change in the wording of the statute such as was involved in *Helvering* v. *Wilshire Oil Co., Inc.*, 308 U. S. 90 (1939), where the Court held that the change in the statute warranted the change in the regulations.

There has been considerable discussion in the various cases involving joint returns of husband and wife as to whether or not they are a single taxpayer (See *Pierce* v. *Commissioner, supra; Janney* v. *Commissioner*, 108 Fed. [2d] 564; *Commissioner* v. *Thomas, supra; Commissioner* v. *Rabenold, supra.* While as pointed out above we think

the language of the statute leads to the conclusion that Congress regarded them as a single taxpayer, we do not regard that issue alone as completely determinative of this case. There is nothing inconsistent in the idea that Congress may have conceived of husband and wife filing a joint return as two separate taxpayers and still may have intended that they should enjoy the benefits of pooling income and deductions on a joint return. Congress has always granted a larger personal credit to husband and wife living together than it has to two individuals living apart, which is indicative of its attitude toward the family group. In the earlier acts Congress allowed affiliated corporations to file consolidated returns, wherein the group income was taxed as a unit, but it does not follow from that that all the corporations were a single corporate taxpayer. *Van Vleck* v. *Commissioner*, 80 Fed. (2) 217, 218. Why should it be assumed without specific words to that effect that in granting the right to file joint returns no benefit was intended by way of combined deductions as well as combined income even though they might be regarded as separate taxpayers? Certainly the income tax acts have never stated that they were not to have such benefit. The Commissioner's regulation only has decreed that.

Finally, this case involves a deduction for charitable gifts. No question has ever been raised that the gifts were not to charitable institutions and this Court as late as 1939 in *U. S.* v. *Pleasants*, 305 U. S. 357, stated:

> "We observed in the *Bliss* case that the exemption of income devoted to charity and the reduction of the rate of tax on capital gains 'were liberalizations of the law in the taxpayer's favor, were begotten from motives of public policy, and are not to be narrowly construed'. That observation is equally pertinent here."

So ought it to be in the instant case.

CONCLUSION.

The decision of the United States Circuit Court of Appeals, Second Circuit, should be reversed.

Dated: New York, N. Y., October 30, 1940.

Respectfully submitted,

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